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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,707	04/08/2005	Bernd Zaschke	268510US0PCT	6914
22850	7590	09/05/2007	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			COONEY, JOHN M	
			ART UNIT	PAPER NUMBER
			1711	
			NOTIFICATION DATE	DELIVERY MODE
			09/05/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/530,707

Applicant(s)

ZASCHKE ET AL.

Examiner

John m. Cooney

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's arguments filed 6-14-07 have been fully considered but they are not persuasive.

Claim Rejection - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,12,13, and 17-19 rejected under 35 U.S.C. 102(b) as being anticipated by Heyman et al.(5,919,,972).

Heyman et al. discloses preparations of polyurethane foams prepared from crude MDI as defined by applicants' claims, polyols containing in situ formed polymers formed from ethylenically unsaturated monomers, catalysts, and blowing agents which read on the products and processes claimed (see the entire document). Amounts of polyol component and hydroxyl values of the polyols are values encompassed by ranges of amount values and the make-up defined by the polyols disclosed by Heyman et al. Based on the materials employed in the making of the foams of Heyman et al. and the description of the articles prepared, it is held that Heyman et al.'s disclosure is inherently concerned with formation of articles that are closed celled to the degree claimed by applicants.

Claim Rejection - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-11 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyman et al. as applied to claims 1-6,12-13, and 16-19 above, and further in view of EP-0,786,480 and Isobe et al.(6,433,033).

Heyman et al. differs from applicants' claims in that it does not express particle distributions for their polymer polyols formed. However, EP-0,786,480 discloses employment of particle sizes in the range of applicants' claims and of narrow particle distributions to be well known for the purpose of obtaining stable polymer polyol dispersions for urethane synthesis (see the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the stable dispersed polymer polyols of the narrow particle size distribution of EP-0,786,480 as the polymer polyols in the making of the preparations of Heyman et al. for the purpose of obtaining stable polymer polyol dispersions for urethane synthesis in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results. It has long been held that where

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the general conditions of the claims are disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Reese* 129 USPQ 402 . Further, a prima facie case of obviousness has been held to exist where the proportions of a reference are close enough to those of the claims to lead to an expectation of the same properties. *Titanium Metals v Banner* 227 USPQ 773. (see also MPEP 2144.05 I) Similarly, it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). EP-0,786,480 is not looked to for its teaching of polymer polyol mixtures as this feature is taught by the primary reference, Heyman et al.

Claims additionally differ from Heyman et al. in specific selection of initiators. However, Isobe et al. disclose the well known nature of the selection of diverse multifunctional materials as initiators in the making of polyols for urethane synthesis (see column 9 line 17 – column 11 line 33). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed any of the diverse polyfunctional initiators embodied by the teachings of Isobe et al. in the preparations of Heyman et al. for the purpose of imparting their polyoxyalkylene polyol initiating effect in order to arrive at the products and/or processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Applicants' arguments have been considered. However, the rejections involving Heyman et al. are maintained as set forth above. Though applicants' argue the opinion

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that the airflow values of Heyman et al.'s disclosure are indicative of open cells, difference based on this disclosure is not evident. Though Heyman et al. discloses articles wherein the cells have been crushed, its disclosure also discloses products formed that are uncrushed prior to being crushed (see column 12 lines 47-48).

Applicants' opinion that the airflow values from Table 2 are indicative of a closed cell foam structure, and the evidence that Heyman et al. crushes their foam blocks are not persuasive of patentability nor do they overcome examiner's position that based on the materials employed in the making of the foams of Heyman et al. and the description of the articles prepared, it is held that Heyman et al.'s disclosure is inherently concerned with formation of articles that are closed celled to the degree claimed by applicants. Though Heyman et al. may carry out further operations which may ultimately render their products different from those claimed, does not distinguish applicants' claims over Heyman et al.'s disclosed products prior to this further processing manipulation. In fact, examiner contends that this additional processing manipulation is further evidence that the uncrushed foam blocks of Heyman et al. are, in fact, closed cell prior to being crushed.

Applicants' arguments as to the secondary teachings lacking of the closed cell structure of applicants' claims are unpersuasive in overcoming the above rejection under 35 USC 103 because such features are not deficiencies of the primary reference that these secondary teachings are looking to address.

In regards to applicants' claims 13-15 & 19, applicants' arguments are not directed towards elements reflected by limitation in the claims. Applicants make no

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arguments specifically directed to the polyol claims of their invention, and the arguments and evidence of record are maintained to be unpersuasive of patentability for these claims.

Claim Rejection - 35 USC § 102

Claims 13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry et al.(6,127,443).

Perry et al. discloses preparations of polyurethane foams prepared from crude MDI as defined by applicants' claims, polyols containing in situ formed polymers formed from ethylenically unsaturated monomers, catalysts, and blowing agents which read on the products and processes claimed (see the entire document). Amounts of polyol component and hydroxyl values of the polyols are values encompassed by ranges of amount values and the make-up defined by the polyols disclosed by Perry et al.

Claim Rejection - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. as applied to claim 13 above, and further in view of Isobe et al.(6,433,033).

Claims differ from Perry et al. in specific selection of initiators. However, Isobe et al. disclose the well known nature of the selection of diverse multifunctional materials as initiators in the making of polyols for urethane synthesis (see column 9 line 17 – column 11 line 33). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed any of the diverse polyfunctional initiators embodied by the teachings of Isobe et al. in the preparations of Perry et al. for the purpose of imparting their polyoxyalkylene polyol initiating effect in order to arrive at the products and/or processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Applicants' arguments have been considered. However, rejections involving Perry et al. are maintained for the reasons set forth above. Applicants' arguments are not directed towards elements reflected by limitation in the claims. Applicants make no arguments specifically directed to the polyol claims of their invention, and the arguments and evidence of record are maintained to be unpersuasive of patentability for these claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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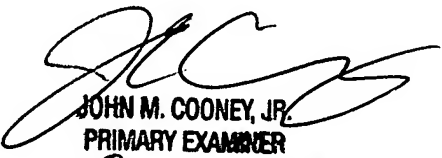
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system.


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